

Barr, Robert CONFIDENTIAL - ATTORNEYS' EYES ONLY May 27, 2006
Redwood Shores, CA

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

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TELCORDIA TECHNOLOGIES, INC.,)

)

Plaintiff,)

)

vs.) Case No. 04-876-GMS

)

CISCO SYSTEMS,)

)

Defendant.)

)

CONFIDENTIAL ATTORNEYS' EYES ONLY

Deposition of ROBERT BARR, taken on behalf
of Plaintiff, at the 201 Redwood Shores Parkway,
Redwood Shores, California, commencing at
10:04 a.m., Saturday, May 27, 2006, before Richard
M. Raker, CSR No. 3445.

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(202) 220-4158

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|--|---|
| <p>1 representation, you'd better check it out. 01:58PM</p> <p>2 THE WITNESS: That's what it says on 01:58PM</p> <p>3 page 5. Yes. 01:58PM</p> <p>4 MR. REINES: One at a time, please. 01:58PM</p> <p>5 BY MR. PRICE: 01:58PM</p> <p>6 Q. Eighteen months from October of 1998 01:58PM</p> <p>7 would be sometime in early 2000; is that correct? 01:59PM</p> <p>8 A. That's correct? 01:59PM</p> <p>9 Q. Exhibit Barr 019, which is the -- what 01:59PM</p> <p>10 you've characterized as the mistake letter from 01:59PM</p> <p>11 Mr. Kovalick, says that Telcordia intends to 01:59PM</p> <p>12 enforce its patent portfolio against any and all 01:59PM</p> <p>13 infringers now or upon the conclusion of the above 01:59PM</p> <p>14 litigation, closed quote. Referring to litigation 01:59PM</p> <p>15 that was commenced in October 1998. 01:59PM</p> <p>16 In your experience, how long does a 01:59PM</p> <p>17 patent case typically take to get to trial and 01:59PM</p> <p>18 through appeal? 01:59PM</p> <p>19 MR. REINES: You mean sitting here now 01:59PM</p> <p>20 as the head of the Berkeley Center for Law & 01:59PM</p> <p>21 Technology or at that time or -- 01:59PM</p> <p>22 BY MR. PRICE: 01:59PM</p> | <p>1 in due course. 02:01PM</p> <p>2 Q. What, if anything, did you do when you 02:01PM</p> <p>3 received a copy of this document? 02:01PM</p> <p>4 A. I don't recall specifically. I read 02:01PM</p> <p>5 it. Let's see. I may have -- sometime after this, 02:01PM</p> <p>6 I believe we engaged outside counsel. I don't know 02:02PM</p> <p>7 exactly when. 02:02PM</p> <p>8 Q. Why did you do that? 02:02PM</p> <p>9 A. Oh, this was -- first time there was 02:02PM</p> <p>10 a -- there is more patents involved and a specific 02:02PM</p> <p>11 allegation of infringement, so I probably engaged 02:02PM</p> <p>12 outside counsel. 02:02PM</p> <p>13 Q. And who was that? 02:02PM</p> <p>14 A. Baker Botts. 02:02PM</p> <p>15 Q. And did Baker Botts prepare a written 02:02PM</p> <p>16 opinion of infringement, validity, and/or 02:02PM</p> <p>17 enforceability relating to any of these patents? 02:02PM</p> <p>18 MR. REINES: Give me that question 02:03PM</p> <p>19 back. 02:03PM</p> <p>20 (The record was read back as follows: 02:03PM</p> <p>21 "Q. And did Baker Botts prepare a 02:02PM</p> <p>22 written opinion of infringement, 02:02PM</p> |
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| <p>1 Q. At that time. 01:59PM</p> <p>2 A. Anything from a year to ten years. 01:59PM</p> <p>3 MR. PRICE: Let's mark the next 02:00PM</p> <p>4 document as Exhibit Barr 021 for identification. 02:00PM</p> <p>5 (Exhibit Barr 021 was marked for 02:00PM</p> <p>6 identification by the reporter.) 02:00PM</p> <p>7 MR. PRICE: This is a document with 02:00PM</p> <p>8 production numbers TELC0256231 through -233.01, 02:00PM</p> <p>9 inclusive -- I'm sorry -- point 001, inclusive. 02:00PM</p> <p>10 Q. Can you identify this document? 02:00PM</p> <p>11 A. The first page is a letter to 02:01PM</p> <p>12 Mr. Scheinman on September 7, 2001, from 02:01PM</p> <p>13 Mr. Giordano. And then there are -- there is an 02:01PM</p> <p>14 attachment of several pages. 02:01PM</p> <p>15 Q. Have you seen this document before? 02:01PM</p> <p>16 A. Yes, I have. 02:01PM</p> <p>17 Q. Did you receive a copy of it on or 02:01PM</p> <p>18 about the time that it was received by 02:01PM</p> <p>19 Mr. Scheinman at Cisco? 02:01PM</p> <p>20 A. Once again, I'm sure I received it. I 02:01PM</p> <p>21 believe I received it eventually from 02:01PM</p> <p>22 Mr. Scheinman. I'm sure I received it from someone 02:01PM</p> | <p>1 validity, and/or enforceability 02:02PM</p> <p>2 relating to any of these patents?") 02:03PM</p> <p>3 MR. REINES: I'm going to object on 02:03PM</p> <p>4 vagueness and things. If the question's whether -- 02:03PM</p> <p>5 I'll permit a question on whether they received 02:03PM</p> <p>6 legal advice, related to those questions, in 02:03PM</p> <p>7 written form. 02:03PM</p> <p>8 I don't know what you mean by 02:03PM</p> <p>9 "opinion," and I don't think it's a loaded term. 02:03PM</p> <p>10 And I think it invades the privilege. So I think 02:03PM</p> <p>11 you can get what you want just by using the term 02:03PM</p> <p>12 "legal advice." 02:03PM</p> <p>13 BY MR. PRICE: 02:03PM</p> <p>14 Q. Did Baker Botts provide legal advice, 02:03PM</p> <p>15 in Mr. Reines's term, when you -- when Cisco 02:03PM</p> <p>16 engaged them after receiving this letter? 02:04PM</p> <p>17 A. Yes. 02:04PM</p> <p>18 Q. Was that advice in written form? 02:04PM</p> <p>19 MR. REINES: It's fine. It is again 02:04PM</p> <p>20 vague just because I know there were PowerPoints 02:04PM</p> <p>21 that were presented at meetings with the other 02:04PM</p> <p>22 side. So if you consider it an electronic 02:04PM</p> |

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|--|--|
| <p>1 PowerPoint, you know, that kind of issue -- 02:04PM</p> <p>2 MR. PRICE: Sure. I'm not talking 02:04PM</p> <p>3 about the other side now. I'm just talking about 02:04PM</p> <p>4 advice to Cisco. 02:04PM</p> <p>5 THE WITNESS: I'm sure some of it was 02:04PM</p> <p>6 in written form. 02:04PM</p> <p>7 MR. PRICE: Let's mark the next 02:04PM</p> <p>8 document as Exhibit Barr 022 for identification. 02:04PM</p> <p>9 (Exhibit Barr 022 was marked for 02:04PM</p> <p>10 identification by the reporter.) 02:05PM</p> <p>11 BY MR. PRICE: 02:05PM</p> <p>12 Q. Does this reflect Cisco's retention of 02:05PM</p> <p>13 Baker Botts for the purpose that you mentioned? 02:05PM</p> <p>14 A. Yes. 02:05PM</p> <p>15 Q. And was Mr. Showalter the attorney at 02:05PM</p> <p>16 Baker Botts who was principally responsible? 02:05PM</p> <p>17 A. The lead -- yeah, the lead attorney 02:05PM</p> <p>18 for us. 02:05PM</p> <p>19 Q. The letter from Mr. Giordano to 02:05PM</p> <p>20 Mr. Scheinman was dated May 27th -- I'm sorry. I 02:05PM</p> <p>21 misread -- September 7, 2001; is that correct? 02:05PM</p> <p>22 That's Exhibit Barr 021. 02:05PM</p> | <p>1 anyone acting on Cisco's behalf respond to 02:07PM</p> <p>2 Mr. Giordano's September 7, '01, letter between 02:07PM</p> <p>3 September 19th of 2001 and November 20th of 2002? 02:07PM</p> <p>4 A. It says so -- it says here that "over 02:07PM</p> <p>5 the next few months, I had a number of 02:07PM</p> <p>6 conversations with your attorney when, in 02:07PM</p> <p>7 January 2002, he called me to indicate that Cisco 02:07PM</p> <p>8 and Telcordia were working on other business 02:07PM</p> <p>9 matters that may address the matter and he was not 02:07PM</p> <p>10 permitted to pursue further discussions. 02:07PM</p> <p>11 "Since that time, we have not made any 02:07PM</p> <p>12 progress toward bringing our licensing discussions 02:07PM</p> <p>13 to resolution." 02:07PM</p> <p>14 BY MR. PRICE: 02:07PM</p> <p>15 Q. Do you know what the other business 02:07PM</p> <p>16 matters referred to in that paragraph were? 02:07PM</p> <p>17 A. I was aware that OSMINE was still 02:08PM</p> <p>18 ongoing, I believe, and discussions about 02:08PM</p> <p>19 partnering and testing and -- let's see. We're in 02:08PM</p> <p>20 period 2002. There could have been other 02:08PM</p> <p>21 discussions of other business arrangements with 02:08PM</p> <p>22 Telcordia. 02:08PM</p> |
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| <p>1 A. That's what it says. Yes. 02:05PM</p> <p>2 Q. The letter from Mr. Showalter to 02:05PM</p> <p>3 Mr. Giordano is dated September 19, 2001, 02:05PM</p> <p>4 twelve days later; is that correct? 02:06PM</p> <p>5 A. That's what it says. Yes. 02:06PM</p> <p>6 MR. PRICE: Let's mark the next 02:06PM</p> <p>7 document as Exhibit Barr 023. 02:06PM</p> <p>8 (Exhibit Barr 023 was marked for 02:06PM</p> <p>9 identification by the reporter.) 02:06PM</p> <p>10 BY MR. PRICE: 02:06PM</p> <p>11 Q. Have you ever seen this document 02:06PM</p> <p>12 before? 02:06PM</p> <p>13 A. Yes, I have. 02:06PM</p> <p>14 Q. Do you recognize this as a letter from 02:06PM</p> <p>15 Mr. Giordano to Mr. Scheinman dated November 20, 02:06PM</p> <p>16 2002? 02:06PM</p> <p>17 A. Yes. 02:06PM</p> <p>18 Q. More than a year after Mr. Showalter 02:06PM</p> <p>19 wrote to Mr. Giordano in response to Mr. Giordano's 02:06PM</p> <p>20 letter of September 12, 2001? 02:06PM</p> <p>21 A. The calendar speaks for itself, sir. 02:07PM</p> <p>22 Q. And to your knowledge, did Cisco or 02:07PM</p> | <p>1 Q. By November 20th of 2002, the 02:08PM</p> <p>2 memorandum of understanding had expired, had it 02:08PM</p> <p>3 not? 02:08PM</p> <p>4 A. Well, that's correct. 02:08PM</p> <p>5 Q. And, in fact, on September 7, 2001, 02:09PM</p> <p>6 when Mr. Giordano wrote to Mr. Scheinman, the 02:09PM</p> <p>7 memorandum of understanding had expired; is that 02:09PM</p> <p>8 correct. 02:09PM</p> <p>9 A. When was that? 02:09PM</p> <p>10 Q. September 12th of 2001. 02:09PM</p> <p>11 A. As we said earlier, it was due to 02:09PM</p> <p>12 expire in 2000. Right? Yeah, sometime in 2000. 02:09PM</p> <p>13 MR. PRICE: The next document should 02:09PM</p> <p>14 be marked as Exhibit Barr 024 for identification. 02:09PM</p> <p>15 (Exhibit Barr 024 was marked for 02:09PM</p> <p>16 identification by the reporter.) 02:10PM</p> <p>17 BY MR. PRICE: 02:10PM</p> <p>18 Q. Can you identify this document? 02:10PM</p> <p>19 A. This is a printout of an e-mail which 02:10PM</p> <p>20 states it is from Dave Sincoskie to Dan Scheinman 02:10PM</p> <p>21 with several persons copied. It has some 02:10PM</p> <p>22 attachments. 02:10PM</p> |

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